

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JAMES OWENS #K-83253,)
Plaintiff,)
vs.) Case No. 17-cv-667-SMY
NICHOLAS LAMB, et al.,)
Defendants.)

MEMORANDUM AND ORDER

YANDLE, District Judge:

Following the Mandate from the Seventh Circuit Court of Appeals remanding claims against Defendant Dr. John Coe, Plaintiff James Owens filed a Bill of Costs seeking \$686.25 in costs against Defendants (Doc. 140). Defendants Nicholas Lamb and Leif McCarthy filed a timely objection to the Bill of Costs (Doc. 144). Plaintiff then filed a Motion to Compel Payment of Costs seeking \$4,806.25 (Doc. 168). For the following reasons, Plaintiff's Bill of Costs is **GRANTED in part** and the Motion to Compel Payment of Costs is **DENIED**.

The Seventh Circuit Court of Appeals issued its Mandate vacating the pleadings-based dismissal of the Eighth Amendment claim that Dr. Coe denied Owens adequate nutrition, vacating summary judgment (for lack of exhaustion) on the Eighth Amendment claim that Dr. Coe did not adequately treat Owen's pain, and remanding the case for further proceedings (Doc. 142-1). The mandate further instructed that, "Costs should be taxed against appellee Coe and in favor of the appellant." (*Id.*).

Federal Rules of Appellate Procedure 39 sets forth the procedure for a party seeking costs. A party who wants costs taxed must, within 14 days after the entry of judgment, file with the circuit

clerk and serve an itemized and verified bill of costs. Fed. R. App. Pro. 39(d)(1). Objections must be filed within 14 days after service of the bill of costs. Fed. R. App. Pro. 39(d)(2). The clerk must prepare and certify an itemized statement of costs for insertion in the mandate; but, if the mandate issues before costs are finally determined, the district clerk must (upon circuit clerk request) add the statement of costs to the mandate. Fed. R. App. Pro. 39(d)(3). The Rule also identifies what costs are taxable in the district court, specifically: (1) the preparation and transmission of the record; the reporter's transcript, if needed to determine the appeal; (3) premiums paid for a bond or other security to preserve rights pending appeal; and, (4) the fee for filing the notice of appeal. Fed. R. App. Pro. 39(e).

Here, Plaintiff filed his Bill of Costs with the district court clerk. Accordingly, he is entitled to recover those costs identified in Federal Rule of Appellate Procedure 39(e). The only item in Plaintiff's Bill of Costs that is recoverable under that Rule is his \$505.00 filing fee. Accordingly, Plaintiff's Bill of Costs (Doc. 140) is **GRANTED in part**; Plaintiff is awarded costs of \$505.00 exclusively against Defendant Dr. John Coe. Plaintiff's Motion to Compel Payment of Costs (Doc. 168) is **DENIED**.

IT IS SO ORDERED.

DATED: April 3, 2024

A handwritten signature in black ink, appearing to read "Staci M. Yandle". Below the signature is a circular official seal of the United States District Court for the Northern District of Georgia, featuring an eagle and the text "UNITED STATES DISTRICT COURT" and "NORTHERN DISTRICT OF GEORGIA".

STACI M. YANDLE
United States District Judge